

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, NOVEMBER 06, 2007 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Kevin Lane	Chairman
	Joan Peterson	Commissioner
	Barbara Poelman	Commissioner
	Lynda Berry	Alternate
	Roger Handy	Alternate
CITY STAFF:	Mark Teuscher	City Planner
	Eliza McGaha	Secretary
EXCUSED:	Steve Hill	City Council Liaison
	Reese Nielsen	Vice-Chairman
	Bill McGaha	Commissioner
	Kathy Philpot	Alternate

AGENDA

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

APPLICATION #2967 / PUBLIC HEARING / CHANGE OF ZONE FROM A-5 (AGRICULTURAL DISTRICT) & R-1-8 (RESIDENTIAL DISTRICT) TO GC (GENERAL COMMERCIAL DISTRICT) / PARCELS 03-154-004 & 03-142-0056, AND 1100 SOUTH STREET FROM 450 WEST TO THE UNION PACIFIC RAILROAD RIGHT-OF-WAY / THOMAS E. PETERSON

APPLICATION #2966 / PUBLIC HEARING / SKYLINE COMMERCIAL SUBDIVISION – PRELIMINARY PLAT / 1167 SOUTH MAIN STREET & 94 EAST SLYLINE DRIVE / THOMPSON ASSOCIATES

APPLICATION #2974 / PUBLIC HEARING / AMENDMENT TO ~~CHAPTER~~ TITLE 29 ADDING SECTION DEALING WITH TEMPORARY ORDINANCES, PENDING ORDINANCES AND DEFINING LOTS / BRIGHAM CITY CORPORATION

APPLICATION #2971 / CONDITIONAL USE PERMIT - HOME OCCUPATION / RESIDENTIAL GROUP CHILD CARE PROVIDER / 969 SOUTH MEDICAL DRIVE / SANDRA KOLENDAR

PUBLIC INPUT:

DISCUSSION:

REGULAR MEETING

Chairman Lane opened the regular meeting at 6:30 p.m. There was no Pledge of Allegiance, as the flag was being used elsewhere.

MOTION: A motion was made by Roger Handy to amend the agenda to read ‘TITLE 29’ instead of ‘CHAPTER 29’ for application #2974. The motion was seconded by Commissioner Peterson and passed unanimously.

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

MOTION: A motion was made by Roger Handy to approve the work session minutes of the September 18, 2007 meeting. The motion was seconded by Commissioner Peterson and passed unanimously.

MOTION: A motion was made by Roger Handy to approve the regular meeting minutes of the September 18, 2007 meeting. The motion was seconded by Commissioner Peterson and passed unanimously.

MOTION: A motion was made by Roger Handy to approve the work session minutes of the October 16, 2007 meeting. The motion was seconded by Commissioner Peterson and passed unanimously.

MOTION: A motion was made by Roger Handy to approve the regular meeting minutes of the October 16, 2007 meeting. The motion was seconded by Commissioner Peterson and passed unanimously.

APPLICATION #2967 / PUBLIC HEARING / CHANGE OF ZONE FROM A-5 (AGRICULTURAL DISTRICT) & R-1-8 (RESIDENTIAL DISTRICT) TO GC (GENERAL COMMERCIAL DISTRICT) / PARCELS 03-154-004 & 03-142-0056, AND 1100 SOUTH STREET FROM 450 WEST TO THE UNION PACIFIC RAILROAD RIGHT-OF-WAY / THOMAS E. PETERSON

This is an application to rezone part of Thomas E. Peterson's property that fronts on 1100 South. Part of the east parcel is zoned A-5, which is probably a remnant, and part of it is zoned R-1-8 and currently is marketed all commercial. In addition to Mr. Peterson's request, the City is requesting to include in this rezone 1100 South, starting from about 450 West and continuing west to the Union Pacific Railroad right-of-way, which is currently zoned A-5. These requests are consistent with the General Plan.

MOTION: A motion was made by Commissioner Poelman to open the public hearing for application #2967. The motion was seconded by Roger Handy and passed unanimously.

There was no public comment.

MOTION: A motion was made by Commissioner Poelman to close the public hearing for application #2967. The motion was seconded by Commissioner Peterson and passed unanimously.

Mr. Teuscher recapped the information for Mr. Handy, as he missed the work session discussion on this application. On the west side of Medical Drive is Flying J, an RV park, storage units, a parcel that stables horses and some vacant parcels. Those are all zoned General Commercial and will not affect the property associated with this application. The largest piece being rezoned is 1100 South. Over the years, the property adjacent to the road was rezoned and the road was not and has been left as A-5, which means Agricultural 5-acre minimum lot size. This will be forwarded to City Council who will act as the Land Use Authority in this case.

MOTION: A motion was made by Commissioner Poelman to forward to the City Council with recommendation to approve the change in zoning for application #2967 from R-1-8, on the east parcel, and A-5, on the west parcel, to General Commercial District and have the City's request to change the zoning of 1100 South Street from 450 West Street to the Union Pacific Railroad right-of-way from an A-5 district to a General Commercial district so this area is compatible with adjacent properties. Based on the Staff recommendations and the stipulations that it must comply with those evaluations and also comply with Utah Code 10-9a-502 and based on the findings of fact that the applicant will comply with the Staff evaluation and such use will not under that circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and such use is in compliance with the Brigham City General Plan. The motion was seconded by Commissioner Peterson and passed unanimously.

APPLICATION #2966 / PUBLIC HEARING / SKYLINE COMMERCIAL SUBDIVISION – PRELIMINARY PLAT / 1167 SOUTH MAIN STREET & 94 EAST SLYLINE DRIVE / THOMPSON ASSOCIATES

This is a 2-lot subdivision. Mr. Thompson is selling the Howard Johnson motel and the buyer is asking that lot 1 be separated from lot 2, which the buyer does not want and Mr. Thompson will retain. The applicant is also asking for deferral of public improvements. UDOT is in the process of installing all the public improvements along Highway 89.

There is no proposed use along the frontage of lot 2, at this time, and Mr. Thompson is asking for deferral of public improvements along there. Lot 2 scores a 4.8 on the Pedestrian Sidewalk Master Plan scale, which is the very bottom range of the mid-ranking scale.

MOTION: A motion was made by Commissioner Peterson to open the public hearing for application #2966. The motion was seconded by Commissioner Poelman and passed unanimously.

There was no public comment.

MOTION: A motion was made by Commissioner Peterson to close the public hearing for application #2966. The motion was seconded by Commissioner Poelman and passed unanimously.

Mr. Teuscher stated that Staff does not have a problem with this application or the deferral of public improvements, as the owner does not know what he wants to do with lot 2. A home could be put on the lot and sidewalk required at that time.

Greg Hansen, Hansen & Associates, came forward. Mr. Hansen commented that Skyline Drive is not a typical street, as far as the right-of-way goes. It is a 25-foot wide right-of-way and, as such, it does not have a normal street cross-section for sidewalk. The road there is shifted inside of the right-of-way and there is only 3-feet from the curb and gutter to the right-of-way line. Typically, 5-feet is what is wanted from curb and gutter to the edge of the sidewalk. There is no sidewalk along the south side of Skyline Drive and that is why their client, the applicant, has asked for a deferral. If sidewalk is installed, the public utility easement they are proposing across the front might need to be changed so it is public utility and sidewalk. Mr. Teuscher commented that until it is known what is going to happen with that piece of property, it is the Staff's perspective that sidewalk is not needed. Mr. Hansen commented that the Thompson's have also said that they anticipate that lot 2 will become additional parking. To go in and move a sewer lateral before it is known what will happen with lot 2 is really unnecessary. He said they could add to the plat whatever statement the City wanted. Whoever develops that piece would have to pay for the public improvements.

Mr. Hansen commented that if lot 2 ends up being a parking lot, they would put an easement across the plat where they think it will go. They have an old drawing that shows a location that kind of lines up with the same data the Public Works Department has given them; that should cover it for future use. The realignment of Skyline Drive may take the sidewalk anyway. Mr. Teuscher said Mr. Thompson told him that the buyer of the Howard Johnson intends to contract with Howard Johnson's to retain the name and keep the franchise. The intention is to continue to use it as a motel. The City's agreement with the developer on the north side of Skyline Drive was that if the road was realigned he would be a participant in that. The intent is to move Skyline Drive as far away from the 1100 South intersection as possible. It is not known when or if that will happen.

The recommendation should be to the Land Use Authority which, in this case, is the City Planner.

MOTION: A motion was made by Roger Handy to forward application #2966 to the Land Use Authority with recommendation to approve with the stipulation that it comply with Utah Code 10-9a-608, that it comply with Chapter 25 Subdivision Ordinance and with Staff comments and that it be forwarded to the Land Use Authority, Mark Teuscher, Brigham City Planner; with the findings of fact that the applicant shall comply with Utah Code 10-9a-608 and Brigham City Code Chapter 25 Subdivision Ordinance and that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use in compliance with the City General Plan. The motion was seconded by Commissioner Poelman and passed unanimously.

Greg Hansen asked about approval of the deferral.

MOTION: A motion was made by Roger Handy that the previous motion be contingent upon the deferral of sidewalk until such is required by development that takes place in that area and also on Highway 89, lots 1 and 2. The motion was seconded by Commissioner Poelman and passed unanimously.

APPLICATION #2974 / PUBLIC HEARING / AMENDMENT TO ~~CHAPTER~~ TITLE 29 ADDING SECTION DEALING WITH TEMPORARY ORDINANCES, PENDING ORDINANCES AND DEFINING LOTS / BRIGHAM CITY CORPORATION

This application is from the Staff to make changes to Title 29, particularly in Chapters 1 and 2. The proposed change in Chapter 29.01 is to add 29.01.200 and 29.01.210. The first section is on Temporary Regulations; this section is to be

consistent with State Code. The wording is pretty clear. In the work session discussion, it was suggested to move item E in front of item D; which is not problematic.

The second section is a Pending Ordinance section. A lot of action in Utah is done by the Supreme Court. Mr. Teuscher cited a court case called Western Equities vs. Logan City which is a vesting case. Vesting means when an application is submitted they have vested rights. Many times Cities are in the middle of the action of rewriting codes or plans and the Utah Supreme Court has said that if a City is in that process, the City can require the application of either the new or the existing code, at their discretion. It also applies to plans, in that development can be postponed until the plan is completed. This section codifies that Supreme Court case decision in the Code which justifies a city in taking those actions. This gives the City the ability to make developers comply with a new pending code or plan but the City needs to be certain that the pending code or plan will be adopted. That has already been done, to a certain extent, within Brigham City. Mr. Teuscher said it is really a matter of timing. He gave an example in that the definition of 'lot' is being amended and he anticipates the timing process to be about 60-days by the time it goes through Planning Commission and City Council. If an application came in during that time frame, the applicant would be made to comply with the pending new definition. Chairman Lane commented that this could really help, in a positive way, to give a developer the benefit of seeing where the City is headed. He used the Sign Ordinance as an example such as when a business has double frontage as on 1100 South by Wal-Mart. The Sign Ordinance, at this point, does not take into consideration that there may be double frontage so those businesses are very limited on what they can do for signage.

Mr. Teuscher commented that there are a couple of commercial developers that are considering 1100 South and they were handed the Design Guidelines, when they were begun, and they were told the guidelines were going to be adopted in reference to the Zoning Code and they should use them in their design. This section amendment will close the window between a Supreme Court decision and our Ordinance.

Mr. Handy asked if a pending ordinance was not adopted or was adopted differently than what was anticipated, would a developer, that had been required to follow said pending ordinance, have cause of action because they had been misled. Mr. Teuscher replied that he did not think the City would be liable. There is a built-in 6-month time frame and an applicant has the choice to go ahead and comply with the pending ordinance or wait until it is adopted. In most cases, if an applicant understands why the ordinance is being put in place there usually is not a problem and most are willing to comply. Typically, Staff will wait until the Code is adopted before putting it into play. If it is approved tonight it would still have to go to City Council. At this point, there are no outstanding applications that these changes would apply to.

The definition of 'lot' is being altered in section 29.02. The reason for this is for more clarification on a 'through lot' and 'double frontage' lot.

MOTION: A motion was made by Roger Handy to open the public hearing for application #2974. The motion was seconded by Commissioner Poelman and passed unanimously.

There was no public comment.

MOTION: A motion was made by Commissioner Peterson to close the public hearing for application #2974. The motion was seconded by Commissioner Poelman and passed unanimously.

There was a man in the audience who asked if he could comment on application #2966. As that application was no longer open, Chairman Lane told him that, if he would like to wait, he could make his comments during the public input portion of the meeting.

Commissioner Poelman clarified with Mr. Teuscher that the amendments were to Title 29 rather than Chapter 29.

MOTION: A motion was made by Commissioner Poelman to forward to the City Council with recommendation to approve application #2974 based on the stipulations that it comply with the Staff evaluation, that it comply with Brigham City Code Chapter 29.03 Notices, comply with the Utah Code 10-9a-503; based on the findings of fact that the applicant will comply with the Staff evaluation and that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and such use is in compliance with the Brigham City General Plan. The motion was seconded by Commissioner Peterson and passed unanimously.

APPLICATION #2971 / CONDITIONAL USE PERMIT - HOME OCCUPATION / RESIDENTIAL GROUP CHILD CARE PROVIDER / 969 SOUTH MEDICAL DRIVE / SANDRA KOLENDAR

This is a specific category of child care provider for 9-16 children. Staff has not had any comments from the neighbor notification. The State will not issue Mrs. Kolendar a license until the City approves her use and the City typically waits for the State license before issuing the business license. Commissioner Poelman commented that she thought that having State approval gives the Commission the basis to approve the use because the applicant would have had to meet the State requirements, otherwise it would not be known if the applicant had met them. Approval should be subject to the applicant meeting the requirements of the State. If those requirements are not met then the permit would become void.

Robert and Sandra Kolendar came forward. Mrs. Kolendar stated that the State requires a background check of everyone living in the home. She said her daughter would be helping her and she does not anticipate having 16 children. The anticipated hours of operation are from 5:30 a.m. to 7:30 p.m. Both she and her daughter have been taking child care classes to enhance their daycare. Mr. Kolendar said he would be helping on a temporary basis and has had all the testing required for a daycare provider. They have talked to some of the neighbors. Their next-door-neighbor, Jill Jeppsen, indicated to Mr. Kolendar that she had received notice from the City that they were going to do daycare. She had concerns regarding her dogs but they are going to put slats in the fence so the kids cannot put their hands through it. Mr. Kolendar stated that they have given Ms. Jeppsen money for half of the cost of those slats for the fence.

A life-safety inspection will be done prior to the license being issued. Mrs. Kolendar said she had not done daycare previously but had raised her 8 children and 7 grandchildren. She currently watches her 18-month-old grandchild and wanted to have someone for her to play with. Mr. Teuscher stated that approvals should be consistent with the State categories and allow the applicant to determine how many children they want to care for.

MOTION: A motion was made by Roger Handy to approve application #2971 with the stipulations that the activity will comply with the standards identified in the definition of a licensed family group child care provider, comply with Chapter 21.06 Conditional Uses, comply with Chapter 29.20 Home Occupations and comply with the Staff evaluation and that the life, health and safety inspection will prove to be copacetic and with findings of fact that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the City's General Plan. The motion was seconded by Commissioner Peterson.

Commissioner Poelman asked that it also be subject to State approval. Mr. Handy and Commissioner Peterson agreed to add that to the motion.

The motion passed unanimously.

PUBLIC INPUT:

There was no public input.

DISCUSSION:

Both the Kotter Canyon and North Point Subdivisions are on hold and have not moved on to the City Council, as they are currently working with the Corps on wetlands issues. Staff is also waiting for the UDOT permit for Kotter Canyon. Mr. Teuscher commented that he thought the State had given approval on that but final approval on the design has not yet been given.

Mr. Teuscher said Toyota is not coming.

There is a developer that has purchased the Zundel property on 1100 South and is working through a design. They are aggressively moving forward on their project, which will be a large mixed use commercial P.U.D. on 1100 South with townhomes. It will be intermixed between the wetlands area. They are also looking at acquiring all of the property from the railroad to I-15, which is in Perry. The developer told Mr. Teuscher that they would prefer to work with Brigham City. There is a process to make that happen, however, it is unlikely that Perry would agree with that. There is serious talk about building an overpass over the railroad to access from the Zundel piece to the other piece of property.

There is a group looking at the property directly west of the Crystal Inn to put in what is believed to be a restaurant. They have not talked with the City, as of yet.

Mountain America has acquired the southwest corner of 1100 South and Main Street from Nadim Bakhazi, who did the Skyline Development on the east side.

According to a traffic study, the intersection at Georgia and Westland will need a traffic light in about 10-years. The traffic study concluded that an island should be put in from 1100 South to Georgia, which would prohibit left-hand turns. Traffic

warrants that the City should put a light in there and coordinate it with the light on 1100 South. A warrant needs to have equal traffic flow from all four quadrants of the intersection.

MOTION: A motion was made by Roger Handy to adjourn. The motion was seconded by Commissioner Poelman and passed unanimously.

The meeting adjourned at 7:32 p.m.

This certifies that the regular meeting minutes of November 06, 2007 are a true and accurate copy as approved by the Planning Commission on December 04, 2007.

Signed: _____
Jeffery R. Leishman, Secretary